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## SENATE BILL No. 518

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 14-8-2-289; IC 14-12-1-3; IC 14-23-1-1; IC 32-30-6; IC 36-7.

**Synopsis:** Forestry issues. Requires the department of natural resources to provide forestry information to units of local government. Specifies that certain activities of a forestry operation are not a public or private nuisance. Entitles a forestry operation that successfully defends a nuisance action to reasonable costs and attorney's fees incurred to defend the action. Requires that before adopting an ordinance that restricts a forestry operation, the unit of local government must allow the department an opportunity to review and comment on the proposed ordinance. Encourages units to recognize the needs of forestry in future growth. Repeals and relocates the definition of "unit of local government".

**Effective:** July 1, 2005.

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January 18, 2005, read first time and referred to Committee on Agriculture and Small Business.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 518

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 14-8-2-289 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 289. "Unit of local  
3 government",  
4 (†) for purposes of IC 14-12-1, ~~has the meaning set forth in~~  
5 ~~IC 14-12-1-3; and~~  
6 (2) for purposes of IC 14-22-10, **and IC 14-23-1** means a:  
7 (A) (1) county;  
8 (B) (2) city;  
9 (C) (3) town; or  
10 (D) (4) township;  
11 located in Indiana.  
12 SECTION 2. IC 14-23-1-1 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The department shall  
14 do the following:  
15 (1) Have the care, custody, and control of the forest land owned  
16 by the state, exclusive of state parks.  
17 (2) Adopt necessary rules to properly enforce this chapter.



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(3) Establish, operate, and maintain nurseries for the production of trees to be used in reforestation. The trees may be:

(A) used to reforest land owned by the state;

(B) supplied to owners of private land at a price not exceeding cost of production; or

(C) used for planting on public roads or land under the terms that are considered by the department to be for the public benefit.

(4) Prepare, print, post, or distribute printed matter relating to forestry.

(5) Make investigations or experiments with regard to forestry questions.

(6) Subject to the approval of the governor, purchase land and forests. For the purpose of acquiring land and forests, the commission may exercise the right of eminent domain in the manner provided in IC 14-17-3.

(7) Receive and accept, in the name of the people of Indiana, by gift or devise, the fee or other estate in land or forests.

(8) Examine the forest land owned by the state or by a state institution for the purpose of advising and cooperating in securing proper forest management of the land.

(9) Employ, with approval of the authorities having control of the state penal institutions, convicts committed to a penal institution for the purpose of producing or planting trees, building roads, or doing other work in the forests and in clearing, draining, or developing land purchased or acquired by the state for forestry purposes.

(10) Propagate trees and shrubs for state institutions or for planting along highways. A common carrier may transport trees or shrubs grown by the state at a rate less than the established tariff to and from points within Indiana.

(11) Have the custody of all abstracts of title, papers, contracts, or related memoranda, except original deeds to the state, for land purchased or received under this section.

(12) Examine private forest land:

(A) upon request of; and

(B) at the expense of;

the owner for the purpose of advising the owner on the proper methods of forest management.

**(13) Provide information and advice to a unit of local government concerning forestry issues.**

SECTION 3. IC 32-30-6-1 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter, "agricultural operation" includes any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products. ~~or for growing timber. The term does not include a forestry operation.~~

SECTION 4. IC 32-30-6-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. As used in this chapter, "forestry operation" includes facilities, activities, and equipment used to plant, raise, manage, harvest, and remove trees. The term includes site preparation, fertilization, pest control, and wildlife management.**

SECTION 5. IC 32-30-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this chapter, "locality" **means the following:**

(1) For purposes of section 9 of this chapter, ~~means~~ the specific area of land upon which an:

- (A) agricultural operation; or
- (B) industrial operation;

is conducted. ~~and~~

(2) For purposes of section 10 of this chapter, ~~means~~ the following:

- (A) The specific area of land upon which a public use airport operation is conducted.
- (B) The airport imaginary surfaces as described in IC 8-21-10-8.

**(3) For purposes of section 11 of this chapter, the specific area of land upon which a forestry operation is conducted.**

SECTION 6. IC 32-30-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) An action to abate or enjoin a nuisance may be brought by any person whose:

- (1) property is injuriously affected; or
- (2) personal enjoyment is lessened;

by the nuisance.

(b) A civil action to abate or enjoin a nuisance may also be brought by:

- (1) an attorney representing the county in which a nuisance exists; or
- (2) the attorney of any city or town in which a nuisance exists.

(c) A county, city, or town that brings a successful action under this section (or IC 34-1-52-2 or IC 34-19-1-2 before their repeal) to abate or enjoin a nuisance caused by the unlawful dumping of solid waste is entitled to recover reasonable attorney's fees incurred in bringing the

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action.

**(d) A forestry operation that successfully defends an action under this section is entitled to reasonable costs and attorney's fees incurred in defending the action.**

SECTION 7. IC 32-30-6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) This section does not apply if a nuisance results from the negligent operation of a forestry operation.

**(b) For purposes of subsection (d), a forestry operation is considered to be in continuous operation if:**

**(1) the locality supports an actual or a developing timber crop; or**

**(2) not more than three (3) years have elapsed at the forestry operation since the most recent timber crop was harvested.**

**(c) A forestry operation that:**

**(1) existed before a change in the land use or occupancy of land within one (1) mile of the boundaries of the locality; and**

**(2) would not have been a nuisance before the change in land use or occupancy;**

**is not a private or public nuisance.**

**(d) A forestry operation that conforms to generally accepted forestry management practices and that has been in continuous operation is not a private or public nuisance as a result of any of the following:**

**(1) A change in the ownership or size of the forestry operation.**

**(2) Enrollment in a government forestry conservation program.**

**(3) Use of new forestry technology.**

**(4) A visual change due to removal of timber or vegetation.**

**(5) Normal noise from forestry equipment.**

**(6) Removal of timber or vegetation from a forest adjoining the locality.**

**(7) The proper application of pesticides and fertilizers.**

SECTION 8. IC 36-7-2-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. A unit must do the following before adopting an ordinance that would restrict a forestry operation (as defined in IC 32-30-6-1.5):

**(1) Send the proposed ordinance to the department of natural resources.**

**(2) Allow the department of natural resources forty-five (45)**

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1        **days to review the proposed ordinance.**

2        **(3) After the review under subdivision (2), allow the**  
 3        **department of natural resources an opportunity to provide**  
 4        **public comment before the proposed ordinance is voted upon.**

5        SECTION 9. IC 36-7-4-201 IS AMENDED TO READ AS  
 6        FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 201. (a) For purposes  
 7        of IC 36-1-3-6, a unit wanting to exercise planning and zoning powers  
 8        in Indiana must do so in the manner provided by this chapter.

9        (b) The purpose of this chapter is to encourage units to improve the  
 10       health, safety, convenience, and welfare of their citizens and to plan for  
 11       the future development of their communities to the end:

- 12       (1) that highway systems be carefully planned;  
 13       (2) that new communities grow only with adequate public way,  
 14       utility, health, educational, and recreational facilities;  
 15       (3) that the needs of agriculture, **forestry**, industry, and business  
 16       be recognized in future growth;  
 17       (4) that residential areas provide healthful surroundings for family  
 18       life; and  
 19       (5) that the growth of the community is commensurate with and  
 20       promotive of the efficient and economical use of public funds.

21       (c) Furthermore, municipalities and counties may cooperatively  
 22       establish single and unified planning and zoning entities to carry out  
 23       the purpose of this chapter on a countywide basis.

24       (d) METRO. Expanding urbanization in each county having a  
 25       consolidated city has created problems that have made the unification  
 26       of planning and zoning functions a necessity to insure the health,  
 27       safety, morals, economic development, and general welfare of the  
 28       county. To accomplish this unification, a single planning and zoning  
 29       authority is established for the county.

30       SECTION 10. IC 14-12-1-3 IS REPEALED [EFFECTIVE JULY 1,  
 31       2005].

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